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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,857	09/30/2003	In E. Moon	EMOON.001RADVI	6196

20995 7590 07/27/2006

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EXAMINER
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NGUYEN, TUAN N

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,857

Applicant(s)

MOON, IN E.

Examiner

Tuan N. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 6/30/06 have been fully considered but they are not persuasive. With respect to the applicant's argument in the second paragraph of page 6 of the paper filed 6/30/06, it appears that the applicant's interpretation of the language "depending portion" to be narrower than what is being claimed. The examiner can reasonably interpreted any portion of that shown in Fig. 3 to be a "depending portion" as stated in the previous office action. Since the Anderson bath is designed to portably place on the rim of the a toilet bowl with the seat in a raise position, the orientation of channel (C) such as being in the front or rear (reversibly) of the toilet bowl and whether would be placed down on the device is based on the user's desire, which the structural of the Anderson's bath is capable. The rim (R) of the bath is structured to conform with the curvature of the rim so as to be placed thereon. As clearly shown in Fig. 3 of Anderson, each one of the two projections (about number 42) projected inwardly at the top of the channel (C) can be considered as the attachment member and/or the second attachment member.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson et al. (hereinafter Anderson).

In regard to claim 21, Anderson discloses a support member comprising a substantially elongated plate (R) configured to extend across a rear portion of a toilet bowl and to be supported by an upper surface of a rim of the toilet bowl, the plate comprises a depending portion (see Fig. 3) is capable of being configured to generally correspond to the curvature of the rim at the rear portion of the toilet bowl, and an attachment member (about C) in the depending portion, the attachment member configured to receive a tubular member (D) in a selectively-releasable press-fit manner (see Fig. 1). The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over the support member that disclosed by Anderson, which is certainly capable of being used in the claim manner.

In regard to claim 22, the elongated plate (R) is sized to straddle a rim of a toilet bowl.

In regard to claim 23, the elongated plate (R) is configured to rest upon the upper surface (16) of the rim of the toilet bowl.

In regard to claim 24, a substantially U-shaped groove (about 41, see Fig. 3) is formed in the depending portion, the groove being sized to receive the tubular member therein, and the attachment member is disposed in the groove. In regard to claim 28, the groove lies in a plane generally parallel to an upper surface of the base plate.

In regard to claim 25, the Anderson support member comprises a second attachment member (as clearly shown in Fig. 3 of Anderson, each one of the two projections (about number 42) projected inwardly at the top of the channel (C) can be considered as the attachment member and/or the second attachment member).

In regard to claim 26, the support member comprises a channel (see Fig. 3, about 66 down to 56) formed in the depending portion and the support member further comprises a front face (see Fig.3, face 20), and wherein the channel (C) has an inlet (about 66) and an outlet (about 56), and the inlet and outlet are both formed at the front face of the support member.

In regard to claim 27, the plate is capable of being sized and configured to fit substantially below a seat portion of a toilet so that the plate is substantially shielded from contact with fluids by the seat portion since it would be under the seat in a similar fashion as that of the applicant.

3. Claims 29-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson.

In regard to claim 29, Anderson discloses a support member being sized and configured to extend across a toilet bowl so that the support member rests upon the upper surface of a rim portion of the toilet bowl, the rim portion bearing the entire weight of the support member, a portion of the support member depending so as to extend, in use, into the bowl below the upper surface of the rim (see Fig. 3, portion 20), the depending portion (the entire portion shown in Fig. 3 is considered as the depending portion) comprising an attachment member (about C) configured to releasably hold a

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tubular member in an orientation so that a longitudinal axis of the tubular member at or adjacent the attachment member lies in a plane generally parallel to the upper surface of the rim. The introductory statement of intended use and all other functional phrases have been carefully considered but are deemed not to describe any structure patentably distinguishable over the support member that disclosed by Anderson, which is certainly capable of being used in the claim manner.

In regard to claim 30, the depending portion comprises a channel (C) configured to accommodate a tubular member. In regard to claim 31, the attachment member is disposed in the channel (the two projections (about number 42) projected inwardly at the top of the channel (C) is considered as the attachment member). In regard to claim 32, the tubular member is received by the attachment member in a selectively-releasable press-fit manner. In regard to claim 33, the channel is generally U- shaped.

In regard to claim 34, the channel lies in a plane generally parallel to the upper surface of the rim.

In regard to claim 35, the support member has a front side and the attachment member is disposed adjacent the front side (where the two attachment projections (about number 42) are located is considered as the front side).

In regard to claim 36, the support member in combination with a tubular rectal assembly (see Fig. 1) having an input end and an output tip ends the support member and rectal assembly configured so that the attachment member releasably engages the input end so that a longitudinal axis of the rectal assembly at the input end extends in a direction generally transverse to a direction of a longitudinal axis of the rectal assembly

at the output tip end (see the bend shown by the dash lines of the tubular rectal assembly).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson in view of Miller.

Although the tubular rectal assembly of the Anderson reference does not have the specific structures as claimed, attention is direct to the Miller reference which teaches an analogous tubular rectal assembly (10) having the structures as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the tubular rectal assembly of Anderson with a tubular rectal assembly as, for example, taught by Miller, where in so doing would involve mere substitution of one functional equivalent spraying device for another and the selection of any of these known equivalents to spray liquid onto a user would perform equally well on the Anderson device.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims

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are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 29-39 provisionally rejected on the ground of nonstatutory obviousness-

type double patenting as being unpatentable over claims 21-40 of copending

Application No. 09/949,058 in view of Anderson. The limitations of claims 29-39 of the instant application has already been cover by claims 21-40 of copending Application No. 09/949,058 except for the longitudinal axis language which is obvious in view Anderson. The longitudinal language merely describes the structures already claimed in claims 21-40 of copending Application No. 09/949,058.

This is a provisional obviousness-type double patenting rejection.

### **Conclusion**

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not




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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine R. Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
7/21/06

TN